

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 CASE NO.: CV-10-2618 (JBW) (RLM)

-----x

4 KOSHER SPORTS, INC.,
5 Plaintiff,
6 -against-

7 QUEENS BALLPARK COMPANY, LLC,

8
9 Defendant.

10 -----x

11 June 20, 2011

10:45 a.m.

12
13
14 CONTINUED DEPOSITION of JONATHAN KATZ,
15 taken by Defendants, held at the offices of
16 Herrick Feinstein, LLP, 2 Park Avenue, New York,
17 New York, before Eileen Mulvenna, CSR/RMR,
18 Certified Shorthand Reporter, Registered Merit
19 Reporter and Notary Public of the State of New
20 York.

1
2 A P P E A R A N C E S:
3
4

5 IRA DANIEL TOKAYER, ESQUIRE
6 Attorneys for Plaintiff
405 Lexington Avenue
New York, New York 10174
imtoke@mindspring.com

7
8
9 HERRICK FEINSTEIN, LLP
10 Attorneys for Defendant
2 Park Avenue
New York, New York 10016

11 BY: AVERY S. MEHLMAN, ESQ.
amehlman@herrick.com
12 JONATHAN L. ADLER, ESQS.
jadler@herrick.com

13
14
15 A L S O P R E S E N T:
16 LEO N. KLEIN, Esq.
17
18
19
20
21
22
23
24
25

1 JONATHAN KATZ

2 JONATHAN KATZ,

3 having been duly affirmed by Eileen Mulvenna,
4 a Notary Public of the State of New York,
5 was examined and testified as follows:

6 EXAMINATION

7 BY MR. MEHLMAN:

8 Q. Prior to coming here this morning,
9 did you prepare in any way for today's
10 deposition?

11 A. I've listened to the tape.

12 Q. Have you listened to both tapes?

13 A. Yes.

14 Q. And you've listened to all of
15 them -- in their entirety?

16 A. Yes.

17 Q. When was the last time you listened
18 to both tapes in their entirety?

19 A. It was within the last week.

20 Q. Did you prepare any transcripts with
21 regard to the tapes, additional transcripts,
22 other than the ones that have already been turned
23 over?

24 MR. TOKAYER: Objection as to form.

25 You can answer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JONATHAN KATZ

MR. TOKAYER: I should have objected at the time to that question as well.

MR. MEHLMAN: Just note that we don't believe it's a proper objection in light of the situations that are at hand in this matter.

MR. TOKAYER: I also object to the form of the question as asked and answered, if that's what you're getting at.

BY MR. MEHLMAN:

Q. By the way, Mr. Katz, during the break you just had outside, did you have a conversation with your attorney regarding answering the questions as to when you informed counsel of the taped conversations?

MR. TOKAYER: I'm not going to let him answer that question as well.

Q. Have you taped any of the conversations between yourself and Aramark other than these two conversations; the January 6, 2011, conversation and the April 6, 2011, conversation?

A. I have taped conversations before, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JONATHAN KATZ

Q. What dates were those conversations from?

A. I have no idea. They're over the course of eight years.

Q. Where are those taped conversations now?

A. Erased. There's just operational conversations, normal business practice of going to a meeting and trying to remember a 50-minute conversation.

Q. So you routinely tape conversations between yourself and Aramark; is that your testimony?

MR. TOKAYER: Objection as to form.

A. I tape meetings just for operational -- to go back and refer for operational purposes.

Q. And it's your testimony that you have other taped conversations between yourself and Aramark?

MR. TOKAYER: Objection as to form.

A. I said I've taped other conversations.

Q. And they've all been -- other than

1 JONATHAN KATZ

2 the January 6 and the April 6 conversation,
3 they've all been erased?

4 A. Yes, they were from the season
5 prior -- seasons prior.

6 Q. Did you have any transcripts or any
7 notes regarding those conversations?

8 A. No.

9 Q. Did you ever tape conversations
10 between yourself and QBC?

11 A. No.

12 Q. Now, when you met with Mr. Gray and
13 Mr. Kleckner -- first initially Mr. Gray, then
14 Mr. Kleckner came in, on January 6, 2011, that
15 was initially an operational meeting; is that
16 correct?

17 A. Yes.

18 Q. But that wasn't the purpose of you
19 going into that meeting, was it?

20 MR. TOKAYER: Objection as to form.

21 A. Yes, it was.

22 Q. You weren't going to go into that
23 meeting to discuss your ability to operate on
24 Friday and Saturday?

25 A. The meeting was called by Mr. Gray

1 JONATHAN KATZ

2 BY MR. MEHLMAN:

3 Q. When was the next time you stated
4 that you were going to be open on Friday and
5 Saturday between January 6 and April 6 --
6 January 6 and opening day?

7 MR. KLEIN: With who?

8 MR. MEHLMAN: With Aramark.

9 A. The last -- the next conversation
10 was April 6.

11 Q. So once again, despite your
12 intention that you were going to open on Friday
13 and Saturday, you did not have another
14 conversation about your operations on Friday and
15 Saturday until April 6, just two days before the
16 home opener; is that correct?

17 MR. TOKAYER: Objection.

18 A. That's correct.

19 MR. TOKAYER: The witness is
20 indicating he needs to take a break.

21 MR. MEHLMAN: Okay.

22 (Recess from the record.)

23 BY MR. MEHLMAN:

24 Q. You testified earlier that you taped
25 other operational conversations with Aramark

1 JONATHAN KATZ

2 other than the April 6th -- I'm sorry -- other
3 than the January 6 and the April 6, 2011,
4 conversations; is that correct?

5 MR. TOKAYER: Objection as to form.

6 April 6 was not an operational
7 meeting.

8 MR. MEHLMAN: I'm sorry.

9 BY MR. MEHLMAN:

10 Q. Other than the January -- other than
11 the January 6, 2011, operational meeting, you
12 testified earlier that you had taped other
13 operational -- other operational meetings with
14 Aramark; is that correct?

15 MR. TOKAYER: His testimony speaks
16 for itself.

17 Q. When was the first operational
18 meeting with Aramark that you taped that you can
19 remember prior to January 6, 2011?

20 A. I don't remember.

21 Q. When you taped these operational
22 meetings, did you put your recording device on
23 the table or did you keep it in your pocket and
24 do it secretively?

25 MR. TOKAYER: Objection as to form.

1 JONATHAN KATZ

2 A. It was in my pocket.

3 Q. Did the other people that you had
4 the meeting with know that you were taping the
5 conversation, as far as you know?

6 A. No.

7 Q. Did you have these -- did you tape
8 any operational conversations with Aramark during
9 the 2010 season?

10 A. I think I did, yes.

11 Q. Do you remember when -- the first
12 one you taped during the 2010 season?

13 MR. TOKAYER: Objection as to form.

14 A. There's one operational meeting
15 before the season. So if I taped one, it must
16 have been that one; but I don't know the date and
17 I don't know the substance of it.

18 Q. Prior to the 2010 season, you had an
19 operational meeting with Aramark that you taped
20 without their knowledge; is that correct?

21 A. Yes.

22 Q. And did you tape any other either
23 operational meetings or conversations with
24 Aramark during the 2010 season or leading up to
25 the 2010 season?

Page 388

1 JONATHAN KATZ

2 MR. TOKAYER: I'm sorry, can I just
3 hear it back.

4 (Record read by Reporter as follows:

5 "QUESTION: And did you tape any
6 other either operational meetings or
7 conversations with Aramark during the 2010
8 season or leading up to the 2010 season?")

9 A. I don't think so.

10 Q. So when you testified earlier that
11 you had taped other operational meetings, you
12 were just referring to that one prior to the 2010
13 season; is that correct?

14 A. No.

15 Q. What other conversations, whether
16 meetings or by telephone, other than the
17 January 6 and April 6, 2011, meeting and
18 conversation did you tape?

19 A. There were other operational
20 meetings at other venues.

21 Q. Now, so you only taped -- other than
22 the January 6, 2011, you only taped one
23 operational meeting with Aramark referencing Citi
24 Field; is that your testimony?

25 THE WITNESS: Can you repeat that

JONATHAN KATZ

question.

(Record read by Reporter as follows:

"QUESTION: Now, so you only
taped -- other than the January 6, 2011,
you only taped one operational meeting with
Aramark referencing Citi Field; is that
your testimony?"

BY MR. MEHLMAN:

Q. Other than the January 6, 2011,
operational meeting, you only taped one
additional operational meeting with Aramark
referencing Citi Field?

A. I might have taped the one before
the 2009 season, but I don't recall.

Q. The operational meeting that you
taped prior to the 2010 season, where is that --
where are the contents of that conversation
today?

A. They don't exist anymore. They were
deleted.

Q. When were they deleted?

A. I have no idea.

Q. Were they deleted sometime in 2010?

MR. KLEIN: He answered the

1 JONATHAN KATZ

2 question. He has no idea.

3 A. I have no idea.

4 Q. You deleted the conversation? The
5 2010 operational meeting, you deleted that?

6 A. Yes.

7 Q. And you deleted it right after it
8 took place or did you leave it -- its content in
9 place for a certain period of time?

10 A. I don't remember.

11 Q. So it's your testimony that you
12 don't remember when you deleted that
13 conversation; is that correct?

14 MR. TOKAYER: Objection as to form.

15 A. You're asking me to remember a
16 conversation I had over a year and a half ago and
17 find out when I deleted it?

18 Q. Yes.

19 A. I have no clue. And I don't think
20 you would know, either.

21 Q. You remembered conversations you had
22 with Mr. Stengel back in 2009, didn't you? You
23 testified to that in your deposition earlier.

24 A. Yes. Those are a little more
25 important than an operational meeting in 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JONATHAN KATZ

going over aprons and menus and how food is going to get up to the stands. I think negotiating a contract is a little more crystal clear than an operational meeting would be.

Q. Before or after this lawsuit was commenced, did you inform your counsel about the existence of the 2010 operational meeting?

MR. TOKAYER: Objection.

Direct you not to answer.

(Discussion off the record.)

BY MR. MEHLMAN:

Q. Do you know if you destroyed the contents of that conversation before or after you commenced the 2010 lawsuit against QBC?

MR. TOKAYER: Objection as to form.

A. I have no idea.

Q. The next question is, did you inform your counsel about the existence of the 2010 recording?

MR. TOKAYER: Objection.

Direct him not to answer.

MR. MEHLMAN: Mark that for a court's ruling. Thank you.

RULING CONTEMPLATED:

1 JONATHAN KATZ

2 (Discussion off the record.)

3 MR. TOKAYER: Give me one second.

4 MR. MEHLMAN: I'm just letting you
5 know now, under the law, federal law,
6 you're going to go out and have a
7 discussion with your client now, I'm
8 entitled to ask him about that discussion.

9 It is not -- it is not in any way
10 privileged if it's regarding the pending
11 deposition and the questions that are being
12 asked. That's not me. That's the federal
13 law.

14 MR. KLEIN: Mark it for a ruling.

15 MR. TOKAYER: Show me an authority
16 for that.

17 MR. MEHLMAN: I'm surprised you
18 don't know, you know the authority for a
19 lot of other things. It's pretty clear.
20 And I'm going to be asking him those
21 questions so know that now.

22 MR. KLEIN: You can wait here.

23 (Mr. Tokayer and Mr. Klein leave the
24 room.)

25 MR. KLEIN: Jonathan, come here.

1 JONATHAN KATZ

2 (The witness leaves the room.)

3 MR. TOKAYER: Read the last couple
4 of questions back about --

5 MR. KLEIN: Can you read the last
6 few questions back so we can decide on
7 whether or not we want to make our
8 objection.

9 (Record read by Reporter as follows:

10 "QUESTION: Do you know if you
11 destroyed the contents of that conversation
12 before or after you commenced the 2010
13 lawsuit against QBC?")

14 MR. TOKAYER: Is there an objection
15 to that?

16 THE REPORTER: Yes.

17 (Record read by Reporter as follows:

18 "MR. TOKAYER: Objection as to form.

19 "ANSWER: I have no idea.

20 "QUESTION: The next question is,
21 did you inform your counsel about the
22 existence of the 2010 recording?")

23 BY MR. MEHLMAN:

24 Q. By the way, your counsel from the
25 commencement of this matter is Mr. Tokayer; is

1 JONATHAN KATZ

2 that correct? That's your attorney?

3 A. Yes.

4 Q. And you also are counsel --

5 MR. TOKAYER: Before you go there,
6 now having heard the question back, there
7 was a confusing question. I did object to
8 the form, but Mr. Katz would like to
9 clarify his answer --

10 MR. KLEIN: Go two questions back.

11 MR. MEHLMAN: Before Mr. Katz
12 clarifies his answer --

13 BY MR. MEHLMAN:

14 Q. Mr. Katz, did you have a
15 conversation outside the deposition room just
16 moments ago with your attorneys?

17 MR. KLEIN: Objection.

18 MR. TOKAYER: I'm going to direct
19 him not to answer that question.

20 I did ask him to review his
21 testimony in response to a particular
22 question. The court reporter has been kind
23 enough to reread that question. Mr. Katz
24 has heard it. Now that he's heard it, he
25 wishes to clarify his answer.

1 JONATHAN KATZ

2 MR. MEHLMAN: Let me ask a follow-up
3 question before he's able to clarify his
4 answer.

5 BY MR. MEHLMAN:

6 Q. Did you have a conversation with
7 your attorney outside the deposition room just
8 moments ago, Mr. Katz?

9 MR. TOKAYER: I've already directed
10 him not to answer that question. And now
11 I'm objecting because it's been asked and
12 answered.

13 Q. Mr. Katz --

14 MR. TOKAYER: Or asked and objected
15 to.

16 Q. Mr. Katz, what did you discuss with
17 your attorney outside of the deposition room just
18 moments ago while there was -- during the course
19 of this deposition?

20 MR. SWEDLOW: I object.

21 Direct you not to answer.

22 I will tell you that I directed his
23 attention to a particular question. And we
24 had that question read back. And now he
25 would like to clarify his answer.

JONATHAN KATZ

Q. Please clarify your answer,
Mr. Katz.

MR. KLEIN: Two questions back.

(Discussion held off the record.)

(Record read by Reporter as follows:

"QUESTION: Do you know if you
destroyed the contents of that conversation
before or after you commenced the 2010
lawsuit against QBC?

"MR. TOKAYER: Objection as to form.

"ANSWER: I have no idea.

"QUESTION: The next question
is" --)

MR. TOKAYER: No, that's the
question.

A. The answer is, before the lawsuit,
that was deleted.

Q. I asked you a series of questions as
to when you deleted it and you said, I don't
remember; is that correct?

MR. TOKAYER: Objection.

You have his testimony.

MR. MEHLMAN: No, no, this is --

MR. TOKAYER: No, I'm not going to

1 JONATHAN KATZ

2 have you asking -- this is a deposition --

3 MR. MEHLMAN: This is a deposition
4 and your client testified he didn't
5 remember. In fact, not only did he testify
6 he didn't remember, he says, How could I
7 remember? Would you remember what happened
8 two years ago?

9 I could have the record read back if
10 you want to. That's exactly what he said.
11 Now I'm delving into the fact --

12 MR. KLEIN: Objection. That's not
13 what he said.

14 MR. MEHLMAN: Good. You have your
15 record.

16 MR. KLEIN: That's not what he said.
17 And you have yours.

18 BY MR. MEHLMAN:

19 Q. Did something refresh your
20 recollection between when I asked you that
21 question four different times and you going
22 outside to talk to your lawyer?

23 MR. TOKAYER: Objection as to form.

24 Q. Did your lawyer refresh your
25 recollection as to the correct answer to that

1 JONATHAN KATZ

2 question, yes or no?

3 MR. TOKAYER: Objection.

4 I'm directing him not to answer that
5 question.

6 Q. Did Mr. Tokayer know about the
7 January -- excuse me -- the operational meeting
8 in 2010 that you taped? Did he know you taped
9 that conversation?

10 MR. TOKAYER: Objection.

11 Direct you not to answer.

12 Q. Now, so now you remember that it was
13 before the commencement of the lawsuit; is that
14 correct?

15 MR. TOKAYER: Objection.

16 He said now he remembers that it was
17 not after.

18 Q. Do you remember when the lawsuit was
19 commenced? What date was the lawsuit commenced?

20 A. June of 2010 around about.

21 Q. So it was before that? You remember
22 that now?

23 MR. KLEIN: Which deletions, of
24 which operational meetings?

25 Objection.

1 JONATHAN KATZ

2 MR. MEHLMAN: I think he knows what
3 I'm talking about.

4 MR. KLEIN: I don't think he does.

5 BY MR. MEHLMAN:

6 Q. Your operational meeting from the
7 2010 season, it's your testimony that you now
8 remember that that was deleted before
9 January 10th; is that correct -- June 10th.

10 MR. TOKAYER: He's testified to
11 that.

12 MR. MEHLMAN: Excuse me. He has to
13 testify, not you.

14 MR. TOKAYER: He has testified.

15 MR. MEHLMAN: After you told him,
16 Mr. Tokayer.

17 MR. TOKAYER: I clarified the record
18 and corrected it.

19 MR. MEHLMAN: No, you didn't. You
20 knew about the recording, Mr. Tokayer, and
21 you clarified. He said he didn't remember
22 55 different times, Mr. Tokayer. You took
23 him outside. That's something I have an
24 obligation to go into during the course of
25 this deposition, Mr. Tokayer.